

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALI BAGATE,

Plaintiff,

1:16-cv-2066
COMPLAINT

-against-

BANK OF AMERICA, N.A.,

Defendant.

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The plaintiff ALI BAGATE, by his attorneys Mallon Consumer Law Group PLLC, as and for his complaint against the defendant BANK OF AMERICA, NATIONAL ASSOCATION alleges as follows, upon information and belief:

PRELIMINARY STATEMENT

1. This is an action for actual and statutory and statutory attorney's fees brought pursuant to the to the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"). Defendant called plaintiff's cellular telephone approximately fifty times to collect on an account the plaintiff never opened.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is conferred by 47 U.S.C. § 227(b)(3). Venue is properly laid pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. The plaintiff is an individual natural person and the "called party."

4. Bank of America, N.A. ("Bank of America") is a national banking association based in North Carolina.

FACTUAL BACKGROUND

5. In May 2015, Defendant called plaintiff's cellular telephone (XXX) XXX-3154.
6. Defendant stated to plaintiff that it was calling to collect on a delinquent commercial bank account that was jointly in the name of plaintiff and Mandenka Force LLC.
7. Plaintiff never opened or used a commercial bank account with defendant.
8. Plaintiff has never heard of or been affiliated with Mandenka Force LLC.
9. During the phone call, plaintiff told Defendant that he had not opened this account and that he was not aware of it until Defendant began calling him.
10. Defendant continued to call plaintiff's cellular telephone cellular telephone (XXX) XXX-3154 to collect on this delinquent commercial bank account.
11. Defendant called plaintiff approximately fifty times from May to September 2015 to collect on this account, even though Plaintiff informed Defendant that he never opened this account or used it.
12. Plaintiff does not know how Defendant located his cell phone number (XXX) XXX-3154.
13. Defendant did not have plaintiff's consent to call his cellular telephone with the number (XXX) XXX-3154.
14. None of these calls were made for an emergency purpose.
15. Defendant placed these calls to Plaintiff using an automatic telephone dialing system ("ATDS").
16. The ATDS used by Defendant has the capacity to store or produce telephone numbers to make calls using a random or sequential number generator.

17. As a direct and proximate result of Defendant's actions, Plaintiff is entitled to recover statutory damages from Defendant.

FIRST CAUSE OF ACTION
VIOLATION OF THE TCPA

18. The plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

19. "Willfully" and "knowingly" under the TCPA means that Defendant acted voluntarily, and under its own free will, regardless of whether Defendant knew that it was acting in violation of the statute. Sengenberger v. Credit Control Servs., 2010 U.S. Dist. LEXIS 43874, *16-17 (N.D. Ill. May 5, 2010); see also, e.g., Bridgeview Health Care Ctr. Ltd. v. Clark, No. 09-C-5601, 2013 U.S. Dist. LEXIS 37310 (N.D. Ill. Mar. 19, 2013); Stewart v. Regent Asset Mgmt. Solutions, No. 10-CV-2552, 2011 U.S. Dist. LEXIS 50046 (N.D. Ga. May 4, 2011); Davis v. Diversified Consultants Inc., 36 F. Supp. 3d 217, 226 (D. Mass. 2014).

20. Defendant called plaintiff's cellular telephone using an ATDS on multiple occasions without plaintiff's prior express consent.

21. The foregoing acts of Defendant constitute numerous multiple negligent and/or willful and/or knowing violations of the TCPA.

22. As a result of Defendant's negligent and/or willful and and/or knowing violations of the TCPA, Defendant is thus liable to the plaintiff for statutory damages of \$500 to \$1,500 for each call, pursuant to 47 U.S.C. § 227(b)(3).

WHEREFORE, the plaintiff respectfully requests the following relief:

23. \$500 or \$1,500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) as a result of Defendant's negligent and/or willful and/or knowing violations of 47 U.S.C. § 227(b)(1)

24. (ii) injunctive relief prohibiting such conduct in the future pursuant to 47 U.S.C. § 227(b)(3)(A)

25. (iii) any other relief the Court may deem just and proper

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL CAUSES OF ACTION ASSERTED HEREIN.

Dated: March 21, 2016

Respectfully submitted,



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